

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ISABEL ROBLES NAVA, individually and on behalf of
others similarly situated,

Plaintiff,

-against-

OPAI THAI INC. d/b/a OPAI THAI, OPAI INC. d/b/a OPAI
THAI, YAN BING CHEN, TINA DOE, and NOE
CARRETERO,

Defendants.

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1:20-cv-03848-MKV

ORDER

MARY KAY VYSKOCIL, United States District Judge:

On February 1, 2021, the Court held an evidentiary hearing regarding the events that unfolded in this action after Defendant Yan Bing Chen (“Ms. Chen”) filed the Notice of Voluntary Dismissal signed by Plaintiff Isael Robles Nava (“Plaintiff”) on November 16, 2020. [ECF No. 49.] On February 3, 2021, the Court entered an Order to Show Cause and Scheduling Order, *inter alia*, directing that on or before February 15, 2021, (1) Plaintiff show cause, in affidavit form, why he should not be held in contempt of Court for violating the Court’s Orders directing him to appear at the February 1 hearing; (2) Michael Faillace (“Mr. Faillace”), principal of Michael Faillace & Associates, P.C., counsel for Plaintiff, detail all efforts to contact Plaintiff, to provide contact information for Plaintiff, and to provide a detailed description of the involvement in this matter of all employees of his firm; (3) Plaintiff show cause, by letter, why this case should not be dismissed given Plaintiff’s signing of the Notice of Voluntary Dismissal and accepting payment from Ms. Chen; and (4) scheduling a further hearing for February 22, 2021. [ECF No. 70 at 6.] The Court warned that **“PLAINTIFF’S FAILURE TO APPEAR AT THIS HEARING WILL RESULT IN HIS BEING PLACED IN CONTEMPT OF COURT AND MAY RESULT IN DISMISSAL OF THIS ACTION FOR FAILURE TO PROSECUTE.”** [ECF No. 70 at 6.]

On February 12, 2021, Messrs. Michael Steven Ross and Eugene Gormakh appeared in this matter as counsel to Mr. Faillace and, on his behalf, filed a motion to withdraw as Plaintiff's counsel. [ECF Nos. 71–73.] In his affidavit in support of the motion, Mr. Faillace claims without explanation or support that his continued representation of Plaintiff would result in a violation of the New York Rules of Professional Conduct, thereby providing mandatory grounds for withdrawal. [ECF No. 73 ¶ 3 & n.2.] Mr. Faillace offers to provide for the Court's *in camera* review additional facts concerning his reasons for withdrawal. [ECF No. 73 ¶ 3.] As separate, permissive grounds for withdrawal, Mr. Faillace details difficulties communicating with Plaintiff and states that Plaintiff assents to his withdrawal. [ECF No. 73 ¶¶ 4–6.] Mr. Faillace explains that he is providing assistance to Plaintiff in responding to the Court's directive that he explain why he failed to appear at the February 1 hearing, but requests that the Court stay the deadline for Plaintiff to show cause why the case should not be dismissed given his signing of the Notice of Voluntary Dismissal and accepting payment from Ms. Chen. [ECF No. 73 ¶ 7.]

On February 15, 2021, Mr. Faillace timely filed an affidavit providing a much greater detailed description of the involvement in this matter of all employees of Michael Faillace & Associates, P.C. [ECF No. 74.] Mr. Faillace explains that although his firm recently managed to communicate with Plaintiff, Plaintiff failed to appear for a scheduled meeting at Mr. Faillace's office and has now stopped responding to communications. [ECF No. 74 ¶¶ 66, 68–69, 71–72.]

To date, Plaintiff has failed to show cause why he should not be held in contempt of Court for failing to appear at the February 1 hearing and why the case should not be dismissed based upon the Notice of Voluntary Dismissal that he signed. [See ECF No. 70 at 6.]

Accordingly, IT IS HEREBY ORDERED that on or before February 24, 2021, Mr. Faillace shall provide, in affidavit form, for the Court's *in camera* review, additional facts and relevant


authority in support of his motion to withdraw. Mr. Faillace, or his outside ethics counsel, shall file the document in redacted form (or if necessary, *ex parte* under seal) on ECF and e-mail an unredacted copy to Chambers at VyskocilNYSDChambers@nysd.uscourts.gov.

IT IS FURTHER ORDERED that the hearing scheduled for February 22, 2021, at 2:00 PM is adjourned to March 8, 2021, at 11:00 A.M. The hearing will be conducted by videoconference via Skype. All parties and attorneys—including Plaintiff Isael Robles Nava, Defendant Yan Bing Chen, Ren Rong Pan, Michael Faillace, Willam Oates, Jr., and Daniel Tannenbaum, and if they or Mr. Faillace so desire, Michael Steven Ross and/or Eugene Gormakh, counsel to Mr. Faillace—shall appear and participate **by video**. The parties will receive a link by e-mail. The public may join the hearing by telephone by dialing 917-933-2166 and entering code 176932250.

PLAINTIFF'S FAILURE TO APPEAR AT THIS HEARING WILL RESULT IN HIS BEING HELD IN CONTEMPT OF COURT, THE SANCTION FOR WHICH MAY BE DISMISSAL OF THIS ACTION, AND, ALTERNATIVELY, MAY RESULT IN DISMISSAL OF THIS ACTION FOR FAILURE TO PROSECUTE.

SO ORDERED.

Date: February 18, 2021
New York, NY


MARY KAY VYSKOCIL
United States District Judge